

IN THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

AT&T, INC.,)	
)	
Petitioner,)	
)	
v.)	
)	No. 15-1038
FEDERAL COMMUNICATIONS COMMISSION)	
and UNITED STATES OF AMERICA,)	
)	
Respondents.)	
)	

**REPLY OF THE FEDERAL COMMUNICATIONS COMMISSION IN
SUPPORT OF MOTION TO HOLD CASE IN ABEYANCE**

As explained in the FCC's July 2, 2015, motion to hold this case in abeyance, the agency has not yet decided *any* of the issues that AT&T raises in its petition for review. *E.g.*, Mot. 1. Placing this case in abeyance will allow the FCC to complete its work and address those issues, which may obviate the need for this Court to adjudicate the case or, at a minimum, may alter the scope of review. *See id.* at 1–2. Moreover, the requested abeyance would result in only a modest deferral: The FCC has a statutory deadline of no later than January 4, 2016, to conclude a proceeding in which the agency is actively considering the arguments at issue here. *See id.* at 2, 13, 18. In petitioning for review and opposing abeyance, AT&T seeks to bypass ordinary administrative procedures and involve the Court in

agency decisionmaking that is not yet complete. The Court should reject that tactic and grant the FCC's requested abeyance.

ARGUMENT

1. Despite the FCC's unequivocal statements that it has yet to decide any of the issues underlying AT&T's petition, *see* Mot. 1, 11–12, 16, AT&T contends that the order under review, *Connect America Fund*, 29 FCC Rcd 15644 (2014) (*Order*), “mark[s] the consummation of the agency’s decision making process,” Opp. 10–11 (internal quotation marks omitted), regarding “price cap” carriers’ arguments for tailoring their status and obligations (including “Lifeline” obligations) as “eligible telecommunications carriers” (ETCs) to the specific locations for which they receive federal “high-cost” universal service subsidies, *see id.* at 1, 8, 12 & nn.5–6, 13, 15.¹ AT&T misapprehends the *Order*. The FCC has not yet taken any final, reviewable action relevant to this case; in fact, it is actively considering AT&T’s arguments here in pending administrative proceedings.²

In the portion of the *Order* that AT&T challenges, *see* 29 FCC Rcd at 15663–71 ¶¶ 50–70, the FCC applied the forbearance standard of Section 10(a) of

¹ For background on price cap carriers, ETCs, and the FCC’s universal service Lifeline and high-cost support programs, *see* Mot. 2–5.

² Contrary to AT&T’s suggestion (Opp. 10 n.3), counsel’s decision to seek a time-limited abeyance in this case, without separately moving to dismiss the petition, fully comports with the view that the FCC has taken no final, reviewable action relevant to this case. That approach to this litigation merely aimed to conserve the Court’s and parties’ resources.

the Communications Act of 1934 (Communications Act or Act), 47 U.S.C.

§ 160(a), to grant price cap carrier ETCs forbearance, in three specified categories of locations, from voice telephone service obligations that would otherwise apply under the agency's historical interpretation of Section 214(e) of the Act, 47 U.S.C.

§ 214(e); *see Order*, 29 FCC Rcd at 15663 ¶ 51; Mot. 11. Nowhere in the *Order* did the FCC either consider, accept, or reject arguments by AT&T, the United States Telecom Association (USTelecom), or others that price cap carriers are entitled to further relief from their ETC designations and corresponding obligations. Those arguments remain under active consideration in three pending FCC proceedings: the USTelecom forbearance proceeding (statutorily required to conclude no later than January 4, 2016), the universal service high-cost rulemaking proceeding, and the Lifeline modernization and reform proceeding. *E.g.*, Mot. 1, 11–13; *see also Lifeline and Link Up Reform and Modernization*, FCC 15-71, 2015 WL 3884807, at *37 ¶ 126 & n.261 (June 22, 2015) (*Lifeline FNPRM*) (Mot. Exh. 4) (discussing the pending issue of separating ETC status from Lifeline obligations); *Wireline Competition Bureau Releases List of Census Blocks Where Price Cap Carriers Still Have Federal High-Cost Voice Obligations and Seeks to Refresh the Record on Pending Issues Regarding Eligible Telecommunications Carrier Designations and Obligations*, DA 15-851, at 3 ¶ 5 & n.12 (July 23, 2014)

(attached as Exhibit A) (recognizing that the issues in this case remain pending, and seeking to refresh the record on those issues in view of the *Order*).

Because the FCC has not yet decided the issues underlying AT&T's petition for review—but is poised to consider and decide them in the coming months—AT&T's challenge to the *Order* is premature. The Court should place this case in abeyance for the limited period of time the FCC has requested. *See* Mot. 13. AT&T's opposing arguments are unavailing, as explained further below.

2. AT&T concedes that the portion of the *Order* central to this case “addresses the forbearance criteria in 47 U.S.C. § 160.” Opp. 9 (citing *Order*, 29 FCC Rcd at 15663–70 ¶¶ 51–68). Yet because the FCC, without discussion, also elected to amend Section 54.201(d) of the agency's rules, 47 C.F.R. § 54.201(d), AT&T treats the agency's extensive forbearance analysis as immaterial, *see* Opp. 9.

Characterizing the amended Section 54.201(d) as “a new rule of general applicability,” AT&T argues that the FCC thus did not “forbear,” in the *Order*, “from applying an *existing* regulation.” Opp. 9 (internal quotation marks omitted). That is not correct. Section 54.201(d) was adopted in 1997 as part of the FCC's first report and order on universal service. *See Federal-State Joint Board on Universal Service*, 12 FCC Rcd 8776, 9326 Appendix I (1997), *subsequent history omitted*. And significantly, prior to its amendment in conjunction with the grant of

forbearance, Section 54.201(d) paralleled almost verbatim the language of Section 214(e) of the Act, 47 U.S.C. § 214(e). The amendment to the language of the rule contained in the Appendix to the *Order* simply mirrors the scope of forbearance granted in the body of the *Order* from Section 214(e). Compare 29 FCC Rcd at 15663–64 ¶ 51, with *id.* at 15704 Appendix. In amending the rule, the FCC thus mitigated the risk that members of the public might consult the U.S. Code and Code of Federal Regulations without recognizing the newly diminished scope of price cap carriers’ ETC obligations under Section 214(e). Contrary to AT&T’s contention, therefore, the FCC’s act of amending Section 54.201(d) to reflect the scope of forbearance granted in the *Order* in no way suggests (let alone establishes) that the agency considered or rejected commenters’ proposals for additional relief to price cap carriers.

3. The Court should likewise reject AT&T’s assertion that the *Order* is “based upon an erroneous interpretation of the relevant law.” Opp. 1 (internal quotation marks omitted). Nowhere in the *Order* does the FCC adopt *any* interpretation of law—erroneous or otherwise—concerning the arguments at issue in this case. As to the argument that the FCC should reinterpret Section 214(e)(1) of the Act, 47 U.S.C. § 214(e)(1), AT&T focuses on paragraph 67 of the *Order*, see Opp. 8. But AT&T itself concedes (indeed, complains) that paragraph 67 lacks analysis of that argument. See *id.*; Br. 30 (surmising that “[t]he FCC *apparently*

(*though silently*) relied on its earlier interpretation of § 214(e)(1)” (emphasis added)). The FCC merely announced in that paragraph that it would not, in the context of the *Order*, decide whether to “reinterpret[] section 214(e)(1) to sunset all existing ETC designations.” 29 FCC Rcd at 15669 ¶ 67. And as a basis for deferring consideration of that proposal, the agency noted that some commenters had opposed it as contrary to “the important role that Congress has given the states in defining service areas and designating ETCs.” *Id.* at 15670 ¶ 67. Similarly, in paragraph 70 of the *Order*—which AT&T construes to reject the idea of separating price cap carriers’ Lifeline obligations from their ETC status, *see* Opp. 8—the FCC did not analyze the relevant arguments but left them open for a later day. *See* 29 FCC Rcd at 15671 ¶ 70 & n.158; *see also Lifeline FNPRM*, 2015 WL 3884807, at *37 ¶ 126 & n.261 (noting that the *Order* on review here “deferr[ed] a decision on commenters’ arguments regarding the proposal to entirely separate carriers’ Lifeline obligations from their ETC status,” and that the proposals remain “under consideration” in the USTelecom forbearance and universal service high-cost rulemaking proceedings, as well as in the Lifeline proceeding).

3. In arguing that this is merely a run-of-the-mill challenge to a “Final Rule [that] did not go far enough,” Opp. 1 (internal quotation marks omitted), AT&T relies on cases readily distinguishable from this one. The cases AT&T cites concerned questions of statutory interpretation or policy proposals on which the

relevant agencies had expressly opined—unlike in this case. When petitioners challenged the agencies’ decisions before this Court, the agencies did not dispute having reached the issues in question.

For example, in *National Association of Clean Air Agencies v. EPA*, 489 F.3d 1221 (D.C. Cir. 2007) (cited at Opp. 1), the EPA adopted “a final rule increasing the stringency of . . . [certain] emission standards,” *id.* at 1223. A trade association petitioned for review, arguing that the rule “did not go far enough,” *id.* at 1224, because the EPA had impermissibly construed Section 231 of the Clean Air Act, 42 U.S.C. § 7571, “not [to] require the agency to subordinate all other concerns to emissions reduction and reach a ‘technology-forcing’ result,” *National Association*, 489 F.3d at 1224. There was no question, in that case, that the EPA had adopted the statutory interpretation about which the petitioner complained. Indeed, the challenged rule expressly memorialized the agency’s construction of the statute. *See id.* at 1226. *National Association* is therefore inapposite here. The FCC nowhere in the *Order* (nor in the *Order*’s Appendix) purported to reject commenters’ arguments that (1) the Communications Act “precludes ETC obligations and designations in areas where a price cap carrier does not receive high-cost” subsidies, or (2) the FCC should “extinguish the requirement that all ETCs participate in the Lifeline program.” Opp. 10.

Also inapposite are *New England Power Generators Ass’n v. FERC*, 757 F.3d 283 (D.C. Cir. 2014) (cited at Opp. 11); *Appalachian Power Co. v. EPA*, 249 F.3d 1032 (D.C. Cir. 2001) (cited at Opp. 11); and *Fox Television Stations, Inc. v. FCC*, 280 F.3d 1027 (D.C. Cir. 2002) (cited at Opp. 10, 15), *subsequent history omitted*. In *New England Power*, there was no dispute that the FERC had rejected a proposal “to adopt a categorical mitigation exemption for state-sponsored and self-supply entities.” 757 F.3d at 289; *see id.* at 294. Although such entities could still request “tailored exemptions,” *id.*; *see id.* at 289, the possibility of such exemptions did not require the Court to defer consideration of the FERC’s unequivocal denial of a categorical exemption, *see id.* at 294. Likewise, in *Appalachian Power*, there was no dispute that, when adopting a rule concerning “upwind NO_x emissions,” 249 F.3d at 1040, the EPA had affirmatively “refus[ed] to use ozone pollution in the Pittsburgh area as a basis for” the rule’s underlying findings, *id.* at 1066. And in *Fox Television*, which concerned the FCC’s statutory duty “to review each of [its media] ownership rules every two years,” 280 F.3d at 1033, there was no dispute that for the 1998 review cycle, the agency had affirmatively decided “not to repeal or to modify two [of those] rules,” *id.* at 1034. As the agency’s “last word on whether, as of 1998, the [r]ules were still necessary in the public interest as the result of competition,” *id.* at 1038 (internal quotation marks omitted), that decision was sufficiently final to warrant review, *see id.*,

despite the prospect that aggrieved parties could “seek relief from the operation of the rules in other ways,” *id.* at 1039.

Here, by contrast, the FCC is not arguing that it “may one day revisit its conclusion[s],” Opp. 11, purportedly contained in the *Order*, concerning commenters’ proposals for further relief to price cap carriers from their ETC designations and obligations (including Lifeline obligations), *see id.* at 10. Nor do we contend that a mere possibility of future agency action should immunize “conclusions . . . reache[d] along the way . . . from judicial review.” *Id.* at 11; *see id.* at 15. Our point is that the FCC has not yet reached any such “conclusions” at all. Placing this case in abeyance would give the agency time to do so.³

4. Finally, contrary to AT&T’s assertion (Opp. 14), the FCC does not argue that the Court should consolidate all possible challenges to the agency’s pending decision on USTelecom’s forbearance petition. As the parties agree, that petition concerns various issues unrelated to this case. *See* Mot. 11; Opp. 14.

³ AT&T suggests in passing that the FCC has already taken too long to address AT&T’s arguments. *See* Opp. 15. If that were the case—or if, alternatively, AT&T’s statutory arguments for tailoring price cap carriers’ ETC status and obligations to locations where they receive high-cost subsidies were as clear-cut as AT&T purports to believe (*id.* at 13)—AT&T could petition this Court for a writ of mandamus. Presumably recognizing that such a petition would almost certainly fail, AT&T has not done so. Instead, eschewing ordinary judicial and administrative processes, AT&T brings this premature challenge to the *Order*. The Court should not sanction that tactic.

To be clear, however, the FCC has not yet fully resolved even that “one of . . . seven parts” of the forbearance petition, Opp. 14 (emphasis omitted), that concerns the issues underlying AT&T’s petition here. The FCC “GRANTED IN PART” that portion of the forbearance petition insofar as USTelecom sought relief from price cap carriers’ obligation to provide stand-alone voice telephony in three specified categories of geographic areas. *Order*, 29 FCC Rcd at 15702 ¶ 167; *see id.* at 15663 ¶ 51. But the FCC has not otherwise either considered, accepted, or denied arguments for additional forbearance relief. The agency must do so on or before January 4, 2016, or the relevant portion of USTelecom’s forbearance petition will be “deemed granted” by operation of law. 47 U.S.C. § 160(c); *see* Mot. 10. This case should not proceed until (1) that deadline passes (or “such earlier date as the FCC takes action . . . to resolve the issues raised in AT&T’s petition here”); and (2) AT&T, assuming it still wishes “to litigate at that time, has petitioned for review of the resulting order(s).” Mot. 13.

CONCLUSION

For the foregoing reasons, the Court should grant the FCC’s motion to hold this case in abeyance for a limited period of time.

Respectfully submitted,

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PUBLIC NOTICE

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**WIRELINE COMPETITION BUREAU RELEASES LIST OF CENSUS BLOCKS WHERE
PRICE CAP CARRIERS STILL HAVE FEDERAL HIGH-COST VOICE OBLIGATIONS &
SEEKS TO REFRESH THE RECORD ON PENDING ISSUES REGARDING ELIGIBLE
TELECOMMUNICATIONS CARRIER DESIGNATIONS AND OBLIGATIONS**

WC Docket Nos. 10-90, 14-192, 11-42 and 09-197

Comment Date: (30 days after Federal Register publication)

Reply Comment Date: (45 days after Federal Register publication)

1. By this Public Notice, the Wireline Competition Bureau (Bureau) releases the list of census blocks where price cap carriers continue to have the eligible telecommunications carrier (ETC) obligation to provide voice service pursuant to section 214(e)(1) of the Communications Act of 1934, as amended.¹ The Bureau also seeks to refresh the record on pending issues related to ETC designations and obligations in areas served by price cap carriers.

2. In the *December 2014 Connect America Order*, the Commission found that limited forbearance from section 214(e)(1)(A) obligations was warranted in discrete geographic areas.² In particular, the Commission granted limited forbearance “from enforcing a federal high-cost requirement that price cap carriers offer voice telephony service throughout their service areas pursuant to section 214(e)(1)(A) in three types of geographic areas: (1) census blocks that are determined to be low-cost, (2) all census blocks served by an unsubsidized competitor, as defined in the Commission’s rules, offering voice and broadband at speeds of 10/1 Mbps to all eligible locations, and (3) census blocks where a subsidized competitor – i.e., another ETC – is receiving federal high-cost support to deploy modern networks capable of providing voice and broadband to fixed locations.”³

3. The list of census blocks where price cap carriers continue to have the federal ETC obligation to provide voice is available at: <https://www.fcc.gov/encyclopedia/price-cap-resources>.⁴ This list includes census blocks that the Connect America Cost Model (CAM v4.3) has deemed high-cost or extremely high-cost and that are not served by an unsubsidized competitor. Price cap carriers that decline

¹ 47 U.S.C. § 214(e)(1)(A).

² *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order, 29 FCC Rcd 15644, 15663-71, paras. 50-70 (2014) (*December 2014 Connect America Order*).

³ *Id.* at 15663-64, para. 51 (footnotes omitted); see also 47 C.F.R. § 54.201(d)(3).

⁴ The Commission noted that it expected the Bureau would publish a list of the census blocks where the Commission had granted the limited forbearance in the *December 2014 Connect America Order*. See *December 2014 Connect America Order*, 29 FCC Rcd at 15670, para. 69 n.157. For administrative ease, we publish the list of census blocks where price cap carriers continue to have a high-cost voice obligation instead of the list where they do not have such an obligation, as the former list is significantly shorter than the latter list would be. There are more than 5.2 million blocks for which forbearance was granted, compared to more than 1 million where there remains a high-cost obligation.

the Phase II offer of model-based support will continue to have the high-cost obligation to serve these census blocks with voice service until they are replaced by another ETC that is required to offer voice and broadband service to fixed locations that meet the Commission's public service obligations, or unless and until further relief is granted.⁵ Price cap carriers no longer have the federal high-cost obligation to provide voice service in the census blocks that are not included on this list.⁶

4. Against the backdrop of the relief already granted in the *December 2014 Connect America Order*, we also seek to refresh the record on issues raised in various proceedings related to ETC designations and obligations in areas served by price cap carriers. In the *USF/ICC Transformation FNPRM*, the Commission noted that ETC service obligations and funding should be "appropriately matched, while avoiding consumer disruption in access to communications services."⁷ It sought comment on how existing voice telephony service obligations for ETCs would change as funding shifts to new, more targeted mechanisms, including potentially via forbearance from the relevant requirements of section 214(e)(1).⁸ In the *April 2014 Connect America FNPRM*, the Commission sought to develop the record further on how relieving incumbent local exchange carriers (LECs) of their ETC obligations would comport with section 214 of the Communications Act and what specific obligations incumbent LECs would be relieved of in areas where they do not receive high-cost support.⁹ In October 2014, USTelecom submitted a petition seeking, among other things, forbearance from the enforcement of section 214(e)(1)(A) where a price cap carrier receives no high-cost support.¹⁰ And recently the Commission released a FNPRM for the Lifeline program seeking comment on proposals for ETC relief from Lifeline obligations and incorporating the record from the Connect America and USTelecom forbearance petition proceedings into that docket.¹¹

⁵ The Commission did not forbear in those census blocks where the only ETC is a competitive ETC receiving frozen support to offer voice service, nor did the Commission forbear in those census blocks served by an ETC receiving Mobility Fund support. *December 2014 Connect America Order*, 29 FCC Rcd at 15664, para. 52 n.117. This list includes census blocks that rural broadband experiments provisionally selected bidders intend to serve. Pursuant to the forbearance granted in the *December 2014 Connect America Order*, price cap carriers will be relieved of the federal high-cost obligation to provide voice service in these census blocks once a public notice is released authorizing the relevant provisionally selected bidders to begin receiving support. See *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 29 FCC Rcd 8769, 8788, para. 54 (2014); see also *infra* para. 5 (seeking to refresh the record on pending proposals for additional relief).

⁶ Price cap carriers remain obligated to maintain existing voice services to a given community or part of a community unless and until they receive authority under section 214(a) to discontinue that service. 47 U.S.C. § 214(a). They also must continue to satisfy all Lifeline ETC obligations unless and until any further relief is provided. *December 2014 Connect America Order*, 29 FCC Rcd at 15671, para. 70; see also *infra* para. 5 (seeking to refresh the record on pending proposals for additional relief).

⁷ *Connect America Fund et al.*, WC Docket Nos. 10-90 et al., Report and Order and Further Notice of Proposed Rulemaking, 26 FCC Rcd 17663, 18062, para. 1089 (2011) (*USF/ICC Transformation FNPRM*).

⁸ See *id.* at 18062-66, paras. 1089-1102.

⁹ *Connect America Fund et al.*, WC Docket No. 10-90 et al., Report and Order et al., 29 FCC Rcd 7051, 7117, paras. 195-98 (2014) (*April 2014 Connect America FNPRM*).

¹⁰ Petition for Forbearance of the United States Telecom Association, WC Docket No. 14-192, at 60-73 (filed Oct. 6, 2014) (USTelecom Oct. 6, 2014 Forbearance Petition); *Pleading Cycle Established for Comments on United States Telecom Association Petition for Forbearance from Certain Incumbent LEC Regulatory Obligations*, WC Docket No. 14-192, Public Notice, 29 FCC Rcd 13535 (Wireline Comp. Bur. 2014).

¹¹ *Lifeline and Link Up Reform and Modernization et al.*, WC Docket No. 11-42 et al., Second Further Notice of Proposed Rulemaking et al., FCC 15-71, paras. 125-26 (rel. June 22, 2015).

5. Specifically, we seek to refresh the record on the issues that remain pending and how the actions already taken in the *December 2014 Connect America Order* might affect the Commission's analysis with respect to these pending issues in several open dockets. In the *December 2014 Connect America Order*, the Commission did not resolve the issues that were raised in the Connect America Fund rulemaking proceeding and the forbearance petition regarding possible forbearance or other relief from the price cap carriers' ETC designations or the regulatory requirements imposed on ETCs for those census blocks where forbearance was not granted. Moreover, the Commission did not resolve the issue of granting broader forbearance or other relief from the ETC designations of the price cap carriers serving the census blocks where limited forbearance was granted. The Commission neither accepted nor rejected commenters' various arguments—whether in favor of, or against—such proposals.¹² These issues remain pending to the extent originally raised in the rulemaking proceeding or the forbearance proceeding (or both).

I. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Act Analysis

6. The *USF/ICC Transformation FNPRM*¹³ and *April 2014 Connect America FNPRM*¹⁴ included Initial Regulatory Flexibility Analyses (IRFAs) pursuant to 5 U.S.C. § 603, exploring the potential impact on small entities of the Commission's proposal concerning potential relief from ETC obligations. We invite parties to file comments on the IRFAs in light of this request to refresh the record.

B. Filing Requirements

7. Interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments are to reference **WC Docket Nos. 10-90, 14-192, 11-42, 09-197 and DA 15-851** and may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://apps.fcc.gov/ecfs/>.

¹² See generally *December 2014 Connect America Order*, 29 FCC Rcd at 15663-71, paras. 50-70 (addressing the section 10 criteria insofar as the Commission granted forbearance, but not addressing whether the section 10 criteria were or were not met with respect to any possible additional forbearance, and not reaching in that *Order* other theories for relief); see also, e.g., *id.* at 15664, para. 52 (recognizing that “except for the two circumstances expressly described” in that section of the *Order*, for which forbearance was granted, “[w]e do not address at this time” possible forbearance “from enforcing the section 214(e) obligation of a price cap carrier to offer voice telephony services in extremely high-cost areas where it is not receiving support”); *id.* at 15669-70, para. 67 (citing differing views in the record regarding certain additional actions that some commenters proposed and, without resolving them, noting why they were not implicated by the actions actually taken in the *Order*); *id.* at 15671, para. 70 & n.158 (explaining that the forbearance granted in the *Order* does not relieve price cap carriers of their Lifeline obligations, but referencing still-pending comments in which LECs and certain wireless Internet service providers have advocated that the Commission de-link the high-cost ETC and Lifeline ETC designations); *id.* at 15702, para. 167 (making clear that the *Order* granted in part the USTelecom forbearance petition, without otherwise addressing or resolving all of the issues raised in that petition); Reply Comments of USTelecom, WC Docket No. 14-192 at 25 (filed Dec. 22, 2014) (USTelecom Dec. 22, 2014 Forbearance Reply) (“applaud[ing the] relief” granted in the *December 2014 Connect America Order* and arguing that the Commission should grant further relief in the context of the pending forbearance petition).

¹³ *USF/ICC Transformation FNPRM*, 26 FCC Rcd at 18364-95, App. P; see 76 Fed. Reg. 78384, 78430-42 (2011).

¹⁴ *April 2014 Connect America FNPRM*, 29 FCC Rcd at 7216-44, App. D; see 79 Fed. Reg. 39196, 39221-32 (2014).

- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

8. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

9. This matter shall continue to be treated as a "permit-but-disclose" proceeding in accordance with the Commission's *ex parte* rules.¹⁵ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter's written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

10. For further information, please contact Heidi Lankau, Telecommunications Access Policy Division, Wireline Competition Bureau at 202-418-2876; or at TTY (202) 418-0484.

- FCC -

¹⁵ 47 C.F.R. §§ 1.1200 *et seq.*

**IN THE UNITED STATES COURT OF APPEALS
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AT&T, Inc.
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v.

FEDERAL COMMUNICATIONS COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

No. 15-1038

CERTIFICATE OF SERVICE

I, Sarah E. Citrin, hereby certify that on July 27, 2015, I electronically filed the Reply of the Federal Communications Commission In Support of Motion to Hold Case in Abeyance with the Clerk of the Court for the United States Court of Appeals for the D.C. Circuit by using the CM/ECF system. Participants in the case who are registered CM/ECF users will be served by the CM/ECF system.

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